

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 15967 of 2007(A)  
-----

PETITIONER:  
-----

1. THE DISTRICT PRESIDENT,  
KERALA PRIVATE TRANSPORT WORKERS CONGRESS,  
CHAITHANYA, ERNAKULAM.
2. P.M.BENJAMIN, S/O.LATE MICHAEL.P.P.,  
PULITHARA HOUSE, PERUMPOTTA ROAD,  
ELAMAKKARA, COCHIN-26.
3. T.V.JOSEPH, THARASSERY HOUSE,  
JUBILEE ROAD, THAMMANAM, COCHIN-32.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS:  
-----

1. THE ZONAL MANAGER,  
BANK OF INDIA, ZONAL OFFICE, KALOOR TOWER,  
ERNAKULAM.
2. THE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR OCURT,  
KARSHAKA ROAD, ERNAKULAM.

BY ADV. SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**APPENDIX**

PETITIONER'S EXHIBITS

- EXT.P1- TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT IN WRIT PETITION (C) 4547/05 DATED 9.2.05
- EXT.P2- TRUE COPY OF THE DISPUTE RAISED ON 11.2.05 BY THE UNION
- EXT.P3- TRUE COPY OF THE CLAIM STATEMENT FILED BY THE WORKMEN BEFORE THE CERTRAL GOVT. INDUSTRIAL TRIBUNAL. EKM.
- EXT.P4- TRUE COPY OF THE WRITTEN OBJECTION FILED BY THE RESPONDENT, BANK IN ID NO.9/05 BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, EKM.
- EXT.P5- TRUE COPY OF THE REJOINDER STATEMENT FILED BY THE WORKMEN IN I.D.9/05
- EXT.P6- TRUE COPY OF THE PETITION NUMBERED AS M.P.6/06 IN ID. NO.9/2005
- EXT.P7- TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN I.A.6/06 IN ID.NO.9/2005
- EXT.P8- TRUE COPY OF THE RELEVANT PAGES OF SANCTION REGISTER OF BANK OF INDIA
- EXT.P9- TRUE COPY OF THE PETITION FOR CALLING THE DOCUMENTS FILED BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, EKM.
- EXT.P10- TRUE COPY OF THE ANSWERS TO THE INTERROGATORIES BY THE RESPONDENT, BANK
- EXT.P11- TRUE COPY OF THE MEMORANDUM DATED 9.8.02 OF THE RESPONDENT, BANK.
- EXT.P12- TRUE COPY OF THE INTER OFFICE MEMORANDUM DATED 15.2.90 OF THE RESPONDENT, BANK
- EXT.P13- TRUE COPY OF THE DOCUMENT SHOWING PARTICULARS OF THE 2ND PETITIONER
- EXT.P14- TRUE COPY OF THE INTER OFFICE MEMORANDUM OF the RESPONDENT, BANK DATED 22.5.97
- EXT.P15- TRUE COPY OF THE DOCUMENT REGARDING THE PAYMENT OF WAGES TO THE PERSONNEL DRIVERS DATED 23.11.93
- EXT.P16- TRUE COPY OF THE AWARD OF THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, EKM IN ID 9/05 DATED 19.10.06

(TRUE COPY)

P.A TO JUDGE

**S.SIRI JAGAN, J**

-----  
W.P.(C). 15967/2007  
-----

Dated this the 2<sup>nd</sup> day of November, 2007

**JUDGMENT**

Union in I.D No.9/2005 before the Central Government Industrial Tribunal-Cum-Labour Court, Eranakulam, is the petitioner herein. The petitioner-Union challenges Ext.P16 award passed by the Tribunal-Cum-Labour Court in that I.D in this writ petition. The issue referred for adjudication was "Whether the action of the management of Bank of India in not regularizing the services of personal drivers of Executives viz., Sri.P.M.Banjamin and Sri.T.V.Joseph and terminating their services are correct? If not to what relief the workers are entitled?"

2. The contention of the Union was that the workers involved were workers of the management Bank whose services were illegally terminated. They, therefore, sought reinstatement with back wages. The management took contention that the workmen were not employees of

the Bank at all and that there was no employer-employee relationship between the Bank and the workmen. They took the stand that the workmen personal drivers were employed by the Executives of the Bank and not drivers of the Bank. The Bank neither appointed them nor terminated their service. The drivers were not provided by the Bank to the officers, but the officers themselves appointed them. Therefore, they disclaimed any liability in respect of the workmen in question. Industrial Tribunal-Cum-Labour Court, after appreciating the evidence adduced, came to the conclusion that the workmen were in fact personal drivers of the Executives of the Bank and not drivers employed by the Bank. On that finding, the Tribunal held that the workers are not entitled to any relief in the industrial dispute. The Union is challenging that award.

3. The counsel for the Union would argue that the Labour Court has not appreciated the evidence adduced by the workers properly and that the findings in the award are perverse. He would point out that the

management did not produce material evidence available with them in spite of specific requests made in that behalf and that in reply to a petition summoning document, a senior officer of the Bank filed a counter affidavit stating that, that document is not maintained by the Bank whereas the management witness while giving evidence, admitted that such a document was maintained by the Bank. The counsel, therefore, argued that the conduct of the management before the Tribunal coupled with the evidence on record was sufficient to decide the issue in favour of the workmen.

4. The learned counsel for the management would point out that the very fact that the workmen were not represented by any Union of employee of the Bank, would go a long way in proving that the workmen were not employed by the Bank at all. He would further submit that the evidence adduced by the workmen themselves were more than sufficient to hold that they were never employed by the Bank as drivers of the Bank but only as personal drivers of the Executives. He would

further submit that the minor discrepancies in the evidence is not sufficient to offset the overwhelming evidence against the workmen that too produced by the workmen themselves.

5. I have considered the rival contentions in detail.

6. At the outset, I must remind myself of my jurisdiction in the matter of appreciating correctness of award of Industrial Tribunal-Cum-Labour Court. It is settled law that this Court acting under Article 226 of the Constitution of India is not sitting in appeal over the award. This Court can interfere with such an award only if the award is based on no evidence or where the conclusions arrived at in the award are perverse.

7. In this case, the workmen involved were represented by the District President of Kerala private Transport Workers Congress which is not a union representing workmen of the management Bank. While giving evidence, one of the workmen T.V.Joseph admitted

in cross-examination that he was taken as personal driver of the Manager of NRI Branch, Eranakulam, and that the outgoing Manager used to introduce him to the incoming Managers. He also admitted that he was the personal driver of Sri. E.P.Gopakumar at the time of termination of his service. He categorically admitted that when he applied for membership of the Kerala Private Transport Workers Congress, his occupation was mentioned as personal driver in Bank of India. Admittedly no appointment order or termination order was issued to the workmen.

8. The management Bank is a nationalised Bank and therefore, they have to follow the procedure prescribed for public appointment while selecting employees. Admittedly, the workmen involved in the industrial dispute did not undergo any selection process whatsoever. Both the workmen stated during evidence that they came to know about the vacancy from others and approached the respective officers. When they approached the Manager of the NRI Branch and

Regional Manager respectively offering their services as drivers, they were interviewed by the Executives, perused their licences, enquired of their experience as drivers. It was thereafter, the respective officer asked them to join duty. It is also admitted that the Bank was reimbursing the officers, the wages paid to them for their personal drivers. There was nothing on record to show that the Bank had directly paid any wages to the workmen. After appreciating this evidence, Labour Court came to the finding that the very document produced by claimants themselves show that they were engaged as personal drivers of the Officers. The evidence reveal that they were neither appointed nor terminated by the Bank. Bank had not exercised supervision or control over the workmen. They were not paid by the Bank but by the Officers directly. No leave was even applied for or granted by the Bank to these workmen at any time. It is in the light of these overwhelming materials on record, Tribunal came to the conclusion that the workmen were not employees of the Bank but personal drivers of the Officers concerned. The

counsel for the petitioner relied heavily on the decision in **Bank of Baroda v. Ghemarbhai Harjibhai Rabari (2005 (2) supreme 628)**, the facts of which, according to the petitioner, are on all fours with the facts of this case. But I find from that decision that, in that decision the Supreme Court relied on certain vouchers for payment of wages to the drivers involved in that case to come to the conclusion that the workmen were actually employed by the Bank itself. In this case, vouchers were produced in evidence all of which show that the payment was as reimbursement to the officers who were employing the workmen as personal drivers and there was no direct payment by the Bank to the workmen. Therefore, I am not inclined to accept the contention of the petitioner that the facts of that case are similar to those of this case.

9. In the above circumstances, I am satisfied that there is no perversity whatsoever in the appreciation of evidence by the Tribunal-Cum-Labour Court. Without any finding that the findings are perverse, I cannot

interfere with the award. Therefore the writ petition fails and accordingly the same is dismissed.

**S.SIRI JAGAN**  
**Judge**

mrCS